

Securities and Exchange Commission

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which he or she concludes should, in fairness, be brought to the attention of all participants to the proceeding, shall transmit to the Commission's Secretary, who shall place on the public record of the proceeding:

(1) All such written communications; and

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a) (1) and (2) of this section.

(b) *Notice to participants.* The Secretary shall send copies of the communication to all participants to the proceeding with respect to which it was made, and shall notify the communicator of the provisions of this code prohibiting ex parte communications. If the communications are from persons other than participants to the proceedings or their agents, and the Secretary determines that it would be too burdensome to send copies of the communications to all participants because: (1) The communications are so voluminous, or (2) the communications are of such borderline relevance to the issues of the proceedings, or (3) the participants to the proceeding are so numerous, the Secretary may, instead, notify the participants that the communications have been received, placed in the file, and are available for examination.

(c) *Post decisional communications.* Any Commission member or decisional employee who receives a communication which would be prohibited by this Code, but for the fact that it was received subsequent to the date when the prohibitions imposed hereby have ceased to apply, shall comply with the provisions of § 200.112(a) with respect to such communication in the event that he or she is to act in a decisional capacity in the same proceeding pursuant to remand where he or she concludes, in fairness, that such communication should be brought to the attention of all participants to the proceeding.

[42 FR 14691 Mar. 16, 1977]

§ 200.113 Opportunity to respond; interception.

(a) *Opportunity to respond.* All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the public record in accordance with § 200.112. Such responses shall be included in the public record.

(b) *Interception of communications.* All written communications addressed to the Commission respecting a proceeding will be deemed to be communications to the staff of the interested division and will be directed to that division by the Commission's mail room. A Commission member or decisional employee may instruct any of his assistants who are nondecisional employees to intercept any communication directed to him which might appear to violate this Code and authorize them either to transmit any such written communication to the staff of the interested division of the Commission, if it appears from the contents of the communication that the intent of the sender is consistent with such action, or to return the communication to the sender.

[28 FR 4447, May 3, 1963, as amended at 42 FR 14691, Mar. 16, 1977]

§ 200.114 Sanctions.

(a) *Discipline of persons practicing before the Commission.* The Commission may, to the extent not prohibited by law, censure, suspend, or revoke the privilege to practice before it of any person who makes, or solicits the making of, an unauthorized ex parte communication.

(b) *Adverse action on claim.* Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subpart, the Commission, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

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(c) *Discipline of Commission employees.* The Commission may censure, suspend, or dismiss any Commission employee who violates the prohibitions or requirements of this Code.

[28 FR 4447, May 3, 1963, as amended at 42 FR 14691, Mar. 16, 1977]

Subpart G—Plan of Organization and Operation Effective During Emergency Conditions

AUTHORITY: 15 U.S.C. 77s, 78d, 78d-1, 78w, 77sss, 80a-37, 80b-11; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt).

SOURCE: 28 FR 6970, July 9, 1963, unless otherwise noted.

§ 200.200 Purpose.

This subpart describes the plan of organization and operation which will be observed by the Securities and Exchange Commission in discharging its duties and responsibilities in the event of emergency conditions as defined in the following section.

[28 FR 6970, July 9, 1963, as amended at 71 FR 33386, June 9, 2006; 71 FR 35730, June 21, 2006]

§ 200.201 General provisions.

(a) For purpose of this subpart, a person shall be considered unavailable or incapacitated in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location.

(b) For purpose of this subpart, emergency conditions shall be deemed to commence upon the occurrence, or the imminent threat of the occurrence, of a natural or man-made disturbance, including, but not limited to, an armed attack against the United States, its territories or possessions, terrorist attack, civil disturbance, fire, pandemic, hurricane, or flood, that results in, or threatens imminently to result in, a substantial disruption of the organization or operations of the Commission. Such conditions shall be deemed to continue until the Commission shall, by notice or order, resume its normal organization and operations, whether

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at its headquarters in Washington, DC or elsewhere.

[71 FR 33386, June 9, 2006]

§ 200.202 Offices, and information and submittals.

(a) During emergency conditions, the location or headquarters of the Commission shall be as designated by the Chairman or his successor. The location of each Regional Office of the Commission, if different from the normal location, shall be as designated by the Chairman of the Commission or his successor, or in the absence of communications with him, by the Regional Director for the area or his acting successor.

(b) During emergency conditions, all formal or informal requests, filings, reports, or other submittals shall be submitted to the Commission as permitted in non-emergency conditions, unless the Chairman or his or her successor acting pursuant to § 200.203(c)(1) of this subpart specifies another means or location for submission of such requests, filings, reports, or other submittals, by a notice that is disseminated through a method (or combination of methods) that is reasonably designed to provide broad distribution of the information to the public.

[28 FR 6970, July 9, 1963, as amended at 59 FR 5944, Feb. 9, 1994; 71 FR 33387, June 9, 2006; 73 FR 32225, June 5, 2008]

§ 200.203 Organization, and delegations of authority.

(a) During emergency conditions, the respective functions and responsibilities of the Commissioners, the Chairman of the Commission, and the staff members shall be, to the extent possible, as set forth in Subpart A of this part (§ 200.1 *et seq.*).

(b) Action for and in the name of the Commission taken pursuant to this subpart by one or more Commissioners or by a successor as designated in this section shall mean and include the delegated authority to act for the unavailable or incapacitated Commissioners.

(c) Pursuant to the statutes governing the Commission, to Reorganization Plan No. 10 of 1950, and to Pub. L. 100-181, section 308(b), 101 Stat. 1249 (1987), the following automatic delegation of authority is made to provide